

IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.

Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,

Wednesday, the 20th day of August 2025

I.A.No.3/2025

in

O.S.No.7/2023

1. C.Indira
2. C.Kannadasan
3. C.Kalpana
4. C.Kayalvizhi

..... Petitioners/Plaintiffs

// Vs //

1. Meenal @ Meenakshi
2. K.Thavamani
3. T.Ilayaraja

..... Respondents/ Defendants

This petition is coming up for final hearing before this court on 07.08.2025 in the presence of Advocate.Mr.N.Sundaresan, Advocate for the Petitioner and Advocate.Mr.TCS. Thillainayagam, Advocate for the 2nd and 3rd respondents and 1st respondent was called absent set exparte on 23.07.2025 and upon hearing the enquiry on both sides and on

perusal of the records and having stood over for consideration till this day, this court delivers the following:-

ORDERS

This petition has been filed Under Order 26 Rule 1 R/w and Section 151 of Civil Procedure Code to pass an order to appoint an advocate commissioner for examination of witness PW2 as given here under of this petition.

1. Brief averments of the petition :-

The 2nd petitioner herein is the 2nd plaintiff in the suit and himself examined as PW1 and it is posted for further evidence. we have witness who is ready to depose. However he is aged 75 years and unable to move due to his knee problem. He is main witness to be examined by his side since he know facts and circumstance of this case and he is living since his father period. Therefore in order to elicit truth of the case it is inherent that he must be examined. In this circumstance the 2nd petitioner prayed that an Commissioner must be appointed to examine the witness. The Respondent/Defendant will have no valid objection for the appointment of an Advocate Commissioner for examination of the witness. Hence this petition has to be allowed.

2. Brief averments of the counter affidavit filed by the 2nd respondent/2nd defendant :-

The 2nd Respondent herein is the 2nd Defendant in the main suit. The 2nd respondent filing this Counter Affidavit for himself and on behalf of the 3rd Respondent / 3rd defendant. The 2nd respondent deny all the averments depicted in the Petition as false and frivolous except

those which are herein after specifically admitted as true and correct. The averment depicted in Para 2 of the affidavit as" we have witness who is ready to depose. However, he is aged 75 years and unable to move due to his knee problem. He is main witness to be examined by his side since he know facts and circumstance of this case and he is living since his father period" is vague in nature and does not disclose the witness with medical certificate and as such the petitioners is not maintainable and liable to be dismissed. That this petition is completely devoid of material particulars and the same is filed with the sole aim of protracting the trial. There is no explanation in the petition as to how for the witness is important and related to the case. Hence this petition has to be dismissed with costs.

3. The point for consideration aroused is that :-

Whether the petition has to be allowed or not ?

4. Point :-

Both sides heard. Records perused. This court finds that this application has been filed to examined one Mr.Pandi Alagiri who is alleged to be an important witness. It is also alleged that he is more than 75 years and so an advocate commissioner to be appointed for his examination. The petitioner has also filed the Medical Certificate of Mr.Pandi Alagiri dated 30.07.2025 issues by Dr.P.Venkatasalam M.B.B.S; DLO; stating that the witness Mr.Pandi Alagiri suffering from coronary heart disease and so he has to take bed rest. The above doctor who certified the witness has obtained M.B.B.S and D.L.O which is concerned with general medicine and ENT. He is not entitled to issue medical

certificate for coronary heart disease. He has not specialized in the medicine of cardiology and so his certificate for medical rest could not be taken into consideration. Moreover, the demeanour of the witness to be noted and it also plays a vital role. Sometimes, this court has to put up some important questions directly to the witness as if it is required and so the appearance of the witness in person before this court is required if the petitioner/plaintiff wants to examine his as witness. Hence this petition has got no merits and so it deserves to be dismissed.

5. Result:-

In the result, this petition is dismissed. No costs.

Dictated to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 20th day of August 2025.

**Sub Judge,
Melur.**

Petitioners and Respondent both sides witness and documents : Nil

**Sub Judge,
Melur.**

**Draft/Fair Order
in
IA.No.3/2025
in
O.S.No.7/2023
Dt : 20.08.2025
Sub Court, Melur.**